

MINUTES

CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION ONE

Friday, June 1, 2001

Division One

**A093701 -- The People v. Robert John McMullin.**

The judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

Division Two

**A090612 -- The People v. Kenneth Alan Biagi.**

The minute order of March 17, 2000, is modified to strike the statement: "Defendant is referred to Office of Revenue Collection for payment of attorney fees in the amount of \$500.00." The judgment is affirmed in all other respects. Haerle, Acting P.J. We Concur: Lambden, J., Ruvalo, J. (Not for Publication.)

**A095107 -- Gregg Cleaver v. The Superior Court For the County of Humboldt; The People of the State of California, R.P.I.**

By the Court: The petition for writ of prohibition and request for stay are denied. At the Penal Code section 995 stage, there need only be "some rational ground for assuming the possibility" that the offense was committed. (People v. Slaughter (1984) 36 Cal.3d 629, 637.) Based on evidence that glancing contact causes swelling and testimony that a stun gun's effect Kline, P.J.

**A095112 -- Tony Avila Sampson v. The Superior Court For The County of Sonoma; The People, R.P.I.**

By the Court: The petition for writ of prohibition is denied. Petitioner has made no showing that the Code of Civil Procedure section 170.6 challenge met the time requirements of section 170.6 subdivision (b), and he has presented an insufficient record to support the writ. Kline, P.J.

Friday, June 1, 2001 (continued)

**A091279 -- The People v. Kimberly Cravea.**

The judgment is affirmed. Sepulveda, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A094478 -- Michael E. v. The Superior Court of Contra Costa County; Contra Costa County Children and Family Services, R.P.I.**

The petition for extraordinary relief is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894.) Because the section 366.26 hearing is set for June 13, 2001, our decision is final in this court immediately. (Cal. Rules of Court, rule 24(d).) Chiantelli, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, June 1, 2001 (continued)

Division Five

**A091795 -- In re Marqurus B., a Person Coming Under the Juvenile Court Law.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J.  
(Not for Publication.)

**A091484 -- The People v. Albert F. Delgado.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J.  
(Not for Publication.)

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Monday, June 4, 2001

The Court convened at 9:00 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Strankman, P.J., Stein, J., and Swager, J.; N. Millner, Deputy Clerk; and M. Gilmore, court security.

A088557      The People,  
                 v.  
                 Michael John Mendez.  
Cause called and argued by Richard Such, counsel for appellant, and Mark Howell, Deputy Attorney General, counsel for respondent. Appellant was granted until Monday, June 11, 2001 to respond to a letter filed by the Attorney General. The Attorney General was granted five days to reply, if any. Cause ordered submitted.

At this point in the proceeding, Justice Swager left the bench and Justice Marchiano joined the bench.

A089562      Jack E. Pelletier,  
                 v.  
                 C. Stephen Casalina, et al.  
Cause called and argued by Jordan J. Yudien, counsel for appellant, and Daniel L. Mitchell and Leeds Disston, counsel for respondents. Cause ordered submitted.

A092097      Fannie Williams,  
                 v.  
                 Les Adams.  
Cause called and argued by Sheila A. Reid, counsel for appellant, and Donald P. Gagliardi, counsel for respondent. Cause ordered submitted.

A089095      Napa Citizens for Honest Government, et al.,  
                 v.  
                 Napa County Board of Supervisors, et al.;  
                 City of American Canyon.  
Cause called and argued by John Yeates, counsel for Napa Citizens; Arthur Coon, counsel for Napa County Board; and William D. Ross, counsel for City of American Canyon. Cause ordered submitted.

Court recessed until 1:30 p.m.

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION ONE

Monday, June 4, 2001

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco. Present: Stein, Acting P.J., Swager, J., and Marchiano, J.; B. Robbins, Deputy Clerk; and CHP Officer S. Aldridge, Bailiff.

- A091229      The People,  
                 v.  
                 Horacio Rios Uriba.  
Cause called and argued by Kyle Gee, counsel for appellant, via teleconference, and Aileen Bunny, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A089743      The People,  
                 v.  
                 Rahsaan Coleman.  
Cause called and argued by Victor J. Morse, counsel for appellant, and Christopher W. Grove, Deputy Attorney General, counsel for respondent. Cause ordered submitted.
- A090302      James A. Petricka,  
                 v.  
                 Department of Motor Vehicles.  
Cause called and argued by Lyn Harlan, Deputy Attorney General, counsel for appellant, and Thomas McDonnell, counsel for respondent. Cause ordered submitted.
- A092385      Pleasant Hill Redevelopment Agency,  
                 v.  
                 Able Termite and Pest Control of Pleasant Hill.  
Cause called and argued by Peter W. McGaw, counsel for appellant, and F. Gale Connor, counsel for respondent. Cause ordered submitted.

Court adjourned.

Monday, June 4, 2001

Division Two

**A095094 -- Keith O. Johnson v. The Superior Court. for the County of Contra Costa; The People of the State of California, R.P.I.**

By the Court: Petition for writ of mandate/prohibition is denied. Kline, P.J.

**A095091 -- In re Gregory A. Bogan, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

Division Five

**A089165 -- The People v. Albert Luevanos.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A092723 -- In re Markus S., a Person Coming Under the Juvenile Court Law.**

The order adjudging defendant a ward of the court is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A093486 -- In re James L., a Person Coming Under the Juvenile Court Law.**

By the Court: Appellant's attorney filed a no-issue statement with this court on April 17, 2001, which reviewed the entire dependency proceeding. On May 21, 2001, appellant filed a letter, supported by 11 other letters by persons with knowledge of the case, that sought a full appellate review of the case. After reviewing the letters, the no-issues statement and the entire record on appeal, we have determined that the issues appellant seeks to raise do not meet the standards for further consideration by counsel for this court. The appeal is therefore dismissed. (*In re Sade C.* (1996) 13 Cal.4th 952, 994.) Stein, Acting P.J.

**A090424 -- The People v. Nikolay Mgebrov.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Tuesday, June 5, 2001

Division Four

**A091646 -- The People v. Gregory R. Burgos.**

The judgment is affirmed. Sepulveda, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091342 -- Carl Englund v. Linda Englund.**

The order appealed from is affirmed. Sepulveda, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089528 -- The People ex rel. Thomas J. Orloff, as District Attorney, etc., et al. v. Pacific Bell et al.**

The judgment of the trial court dismissing the action on jurisdictional grounds is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Kay, J. (Certified for Publication.)

**A084899 -- The People v. Tramaine Akeem Wheaton.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

Wednesday, June 6, 2001

Division One

**A094885 -- Joseph Thomas v. The California Department of Health Services.**

By the Court: Appellant having failed to pay the statutory filing fee in compliance with rule 1(c) of the California Rules of Court, after notice having been given pursuant to rule 10(a), the appeal filed on April 30, 2001 is dismissed. Stein, Acting P.J.

Division Two

**A092319 -- In re Kevin C. S., a Person Coming Under the Juvenile Court Law.**

The order is affirmed. Lambden, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

Division Four

**A091029 -- The People v. Darren Michael Dorsey.**

The judgment of conviction is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Wednesday, June 6, 2001 (continued)

Division Five

**A090437 -- Home Builders Association of Northern California v. City of Napa et al.; Napa Valley Community Housing et al.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.  
(Certified for Partial Publication.)

**A092482 -- Marie Kurpiel v. Lazarus Maksic.**

The appeal is dismissed. Stevens, J. We Concur: Jones, P.J., Simons, J.  
(Not for Publication.)

Thursday, June 7, 2001 (continued)

Division One

**A089834 -- James A. Merritt, et al. v. City of Pleasanton.**

By the Court: The written opinion which was filed on May 11, 2001, has now been certified for publication pursuant to rule 976(b) of the California Rules of Court, and it is ordered published in the official reports. Stein, Acting P.J.

**A089834 -- James A. Merritt, et al. v. City of Pleasanton.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

**A092019 --The People v. Steven Alan Wheatley.**

The judgment is modified to reduce the restitution fine from \$800 to \$200, and the direction to the CDC to collect the domestic violence fine is stricken. The judgment is affirmed, as modified. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Division Two

**A089708 -- The People v. Michael Eugene Armstrong.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

**A091502 -- Conservatorship of the Person and Estate of Mary Ann Greis.**

The trial court did not abuse its discretion in granting respondent's petition for instructions and the judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A088154 -- The People v. Antonio Markeith Warren.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Thursday, June 7, 2001 (continued)

Division Three

**A093615 -- In re Al F., a Person Coming Under the Juvenile Court Law. The People v. Al F.**

The order adjudicating appellant a continued ward of the court pursuant to Welfare and Institutions Code section 602 and placing him in foster care is affirmed. Parrilli, J. We Concur: McGuiness, P.J.. Corrigan, J. (Not for Publication.)

**A091732 -- Rene Hilton v. City and County of San Francisco et al.**

Order Modifying Opinion and Denying Rehearing. The Court: It is ordered that the opinion filed herein on May 9, 2001, be modified as follows: (See order.) There is no change in the judgment. Appellant's petition for rehearing is denied. McGuiness, P.J. (Not for Publication.)

**A081437 -- Heather Preston v. State Board of Equalization.**

In an opinion filed on October 22, 1999, we affirmed the trial court's entry of judgment for respondent State Board of Equalization, on the ground that appellant Heather Preston's temporary transfer of original artwork for purposes of reproduction constituted a transfer of tangible personal property, and was therefore taxable. The Supreme Court granted review, and on April 2, 2001, it issued its decision in this case, holding that only a portion of Preston's income from the transfer of her artwork was taxable. (*Preston v. State Bd. of Equalization* (2001) 25 Cal.4th 197, 225.) The court remanded the case "for a calculation of the sales tax owed by Preston under the Agreements and the resulting refund owed to her." (*Ibid.*) Because the required calculations will involve factual determinations, we remand the matter to the trial court for further proceedings consistent with the Supreme Court's opinion. Appellant shall recover her costs on appeal. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Thursday, June 7, 2001 (continued)

Division Four

**A092132 -- The People v. Jose Rivera.**

The order revoking probation and the judgment imposed are affirmed.  
Reardon, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A094799 -- Keith C. Sr. v. The Superior Court of Alameda County;  
Alameda County Social Services Agency, R.P.I.**

The petition is denied. Stevens, J. We Concur: Jones, P.J., Simons, J.  
(Not for Publication.)

Friday, June 8, 2001

Division One

**A089449 -- The People v. Gerald Bailey.**

The order of civil commitment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A093977 -- Lawndale Medical Clinic v. Bay Area Cellular Phone; Curtice, Defendant and Respondent.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Stein, Acting P.J.

**A090957 -- City and County of San Francisco v. Equitable Montgomery Co.**

The judgment is reversed. Costs are awarded to appellant. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)0

Division Three

**A089797 -- The People v. Clyde Williams.**

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A091261 -- The People v. Vince Edward Threatt.**

Judgment affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

Division Four

**A091760 -- Jamal Hassoon v. Jamal Shamieh et al.**

The Court: The request for publication of this court's May 10, 2001 opinion is granted and it is hereby ordered that said opinion be published in Official Reports. Reardon, Acting P.J.

Friday, June 8, 2001 (continued)

**A092321 -- In re Steven J., a Person Coming Under the Juvenile Court Law.**

The orders declaring that the minor be made a ward of the court and placing him in residential treatment are affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090847 -- The People v. Ralph Law.**

Modification to Opinion and Order Denying Rehearing: The Court: 1. Both parties have already waived oral argument in this matter, and the objection stated in appellant's petition for rehearing is addressed in the following modification order. Accordingly, the petition for rehearing is denied. 2. The opinion filed in this matter on May 15, 2001, is modified by deleting the last line on page 10 of the current opinion and inserting the following new section III in its place (this modification does not effect a change in the judgment): We see no sound basis to disturb the restitution order. The judgment is affirmed. Sepulveda, Acting P.J.

**A092203 -- L. Brian McBride et al. v. Weston J. Coolidge et al.**

The judgment of the superior court is modified to delete appellant's name and, as modified, is affirmed. Sepulveda, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A094364 -- Patricia Northlich et al. v. The Superior Court of Contra Costa County; Tile & Stone Concepts.**

Therefore, let a peremptory writ of mandate issue commanding the Superior Court of Contra Costa County to set aside and vacate its order of February 28, 2001, transferring Contra Costa Case No. MSC00-04372 to its Walnut Creek Branch Court of Limited Jurisdiction.

The parties shall bear their own costs in this proceeding. Sepulveda, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution. \

Friday, June 8, 2001 (continued)

Division Five

**A092522 -- In re Clifford and Simone F., a Person Coming Under the Juvenile Court Law.**

The orders are affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A091990 -- The People v. David Wayne Key.**

The order is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A091838 -- Henry V. Lantzy et al. v. Centex Homes et al.**

The judgment is reversed. Appellants are entitled to costs on appeal. Jones, P.J. We Concur: Simons, J., Sepulveda, J.\* (Certified for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090915 -- Marin Storage & Trucking, Inc. v. Benco Contracting and Engineering, Inc.**

Order Modifying Opinion and Certifying Opinion For Publication. The Court: Upon the Court's own motion, the opinion filed on May 10, 2001, is modified as follows: (See order.) The Modification does not change the judgment. The opinion filed May 10, 2001, was not certified for publication in the Official Reports. For good cause it now appears that the opinion should be published in the Official Reports, and it is so ordered. Jones, P.J. (Certified for Publication.)

**A090915 -- Marin Storage & Trucking, Inc. v. Benco Contracting and Engineering, Inc.**

The judgment is reversed, and the matter is remanded for further proceedings on the cross-complaint. Costs on appeal are awarded to appellant. Simons, J. We Concur: Jones, P.J., Stevens, J. (Certified for Publication.)

Monday, June 11, 2001

Division One

**A088617 -- The People v. Nathan James Smart.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

**A091229 -- The People v. Horacio Uriba.**

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Three

**A088353 -- Arnai Maxey v. Providian Financial Corporation et al.**

The arbitration agreement under consideration was broad enough to encompass all of Maxey's claims against Providian. Although the agreement was not unconscionable, it did include a single arbitration-cost-shifting provision violative of public policy. However, that provision may be excised from the arbitration clause, leaving intact a valid, enforceable agreement. Maxey did not waive her rights under the agreement by merely filing suit against Providian. Thus, she is entitled to arbitrate her claims against them. The judgment is reversed. Proceedings in the lower court are to be stayed, pending the results of arbitration. In the interests of justice, each side is to bear its own costs of appeal. Parrilli, J. We Concur: Corrigan, Acting P.J., Walker, J.\*

\*Retired Justice of the Court of Appeal, First District, sitting under assignment by the Chief Justice pursuant to article VI, section 6 of the California Constitution. (Not for Publication.)

**A089404 -- TIG Insurance Company v. Glenn Yamamoto et al.**

The summary judgment entered in favor of respondent TIG is affirmed. Respondent shall recover its costs on appeal. Horner, J.\* We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Tuesday, June 12, 2001

Division One

**A092891 -- Irene M. Rivera v. Laguna Honda, et al.**

By the Court: Appellant having failed to file a brief after notice given under rule 17(a) of the California Rules of Court, the appeal is dismissed. Swager, Acting P.J.

**A094605 -- Latasha B. v. The Superior Court of Alameda County; Alameda County Social Services, R.P.I.**

The challenged orders are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for July 6, 2001. Therefore, our decision is final in this court immediately. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A091015 -- Fibreboard Corporation v. American Home Assurance Company.**

By the Court: Since this court's 06/06/01 opinion does not meet the standard for publication as set forth in the rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 978(a) of the California rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. Swager, Acting P.J.

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Division Two

**A095163 -- In re Louis Tamale, on Habeas Corpus.**

1. By the Court: The petition for writ of habeas corpus is denied. Kline, P.J.

**A095120 -- Wesley E. Owens v. The Superior Court For the County of Alameda; The People of the State of California; R.P.I.**

By the Court: The petition for writ of mandate is denied. Kline, P.J.

## MINUTES

### CALIFORNIA COURT OF APPEAL FIRST APPELLATE DISTRICT DIVISION TWO

Tuesday, June 12, 2001

The Court met at 9:30 a.m. in its courtroom at 350 McAllister Street, Fourth Floor, San Francisco, CA. Present: Kline, P. J., Haerle, J., Lambden, J., Ruvolo, J. and S. Graham, Deputy Clerk.

At this point in the proceedings, Presiding Justice Kline announced that he would not be participating in the first case on calendar.

A090187      The People  
                 v.  
                 Mark Timothy Cofield  
Cause called and argued (telephonically) by David S. Krueger, counsel for appellant and in person by Jeremy Friedlander, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

At this point, Justice Ruvolo left the bench.

A090616      The People  
                 v.  
                 Kyb Fugfugosh  
Cause called and argued by David Addicks, counsel for appellant and Christina Kuo, Deputy Attorney General, counsel for respondent. Cause ordered submitted.

A089841      Keli Cwynar, et al.  
                 v.  
                 City and County of San Francisco  
Cause called and argued by John Mueller, counsel for appellants and Andrew Schwartz, Deputy City Attorney, counsel for respondent. Cause ordered submitted.

Court recessed until 1:30 p.m.

The court reconvened at 1:30 p.m. Present: Kline, P. J., Haerle, J., Lambden, J. and S. Graham, Deputy Clerk.

Wednesday, June 13, 2001

Division One

**A092385 -- Pleasant Hill Redevelopment Agency v. Able Termite & Pest Control of Pleasant Hill, Inc.**

The judgment is affirmed. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

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Division Four

**A091300 -- Curtis W. Lint v. Frank Stokes Anderson et al.**

The judgment is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091614 -- The People v. Peter Charles Bulletti.**

The judgment is affirmed. Sepulveda, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, June 14, 2001

Division Two

**A090383 -- The People v. Benyam Kidane.**

The judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J.  
(Not for Publication.)

**A092573 -- Joe McGrath v. Larry Viera.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J.,  
Ruvolo, J. (Not for Publication.)

**A092253 -- The People v. Jose Mario Quevedo.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J.  
(Not for Publication.)

**A089906 -- In re Gabriel V., a Person Coming Under the Juvenile  
Court Law; The People v. Gabriel V.**

The order committing appellant to the California Youth Authority is  
affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

Division Three

**A090491 -- The People v. Alan Wayne Lee.**

The judgment is reversed. Although appellant did not ask to have his plea  
set aside in the trial court, we nonetheless remand this matter to the trial court to  
permit appellant to withdraw his plea of no contest. If he chooses to withdraw his  
plea, the counts dismissed as part of the plea agreement may be reinstated.  
(*Barrero, supra*, 163 Cal.App.3d at p. 1085; *Cruz, supra*, 44 Cal.3d at p. 1254.)  
McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Thursday, June 14, 2001 (continued)

Division Four

**A090212 -- James K. Winslow-Brady v. Mike Carlson.**

The judgment of the superior court is affirmed. Sepulveda, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A089814 -- Mark Zuckerman et al. v. Bankers Trust Corporation et al.**

For the reasons expressed above, the judgment in favor of respondents is affirmed in its entirety. Costs are awarded to respondents. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday June 15, 2001

Division One

**A092486 -- The People v. Xavier Dearmon.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

Division Two

**A091555 -- The People v. Philip Bruno.**

The Sonoma County Superior Court is directed to amend the abstract of judgment in People v. Bruno (No. SCR-27959) to show 11 days of section 2900.5 credit for the periods of incarceration from January 24 to January 26 and October 5 to October 13, 1999, plus four days' additional credit under section 4019, subdivision (f). As modified, the judgment is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A091848 -- John Nady et al. v. Joseph Richard Jones et al.**

Accordingly, the order sustaining the demurrer to the cause of action for negligence was correct and the judgment is affirmed. Respondents shall recover costs on appeal. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

**A092275 -- City of South Lake Tahoe v. Daylight Construction, Inc.**

The judgment is reversed and remanded with instructions to enter a judgment awarding appellant \$1,650,000 in damages. Appellant to bear its own costs on appeal. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Not for Publication.)

Friday, June 15, 2001 (continued)

Division Three

**A091754 -- The People v. Jesse Morgan Schwartz.**

The judgment is affirmed. Parrilli, J. We Concur: Corrigan, Acting P.J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, June 18, 2001

Division One

**A90302 -- James A. Patrick v. Department of Motor Vehicles.**

The order granting the petition for writ of mandate is reversed. Each party shall bear their own costs on appeal. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Certified for Publication.)

Division Three

**A090704 -- The People v. Nicholas Dane Beardon.**

By the Court: Since this court's May 29, 2001, opinion does not meet the standard for publication as set forth in rule 976(b) of the California Rules of Court, the request for publication is denied. Pursuant to rule 9788(a) of the California Rules of Court, the Clerk is directed to forward to the Clerk of the Supreme Court the request for publication, the opinion, and a copy of this order. McGuiness, P.J.

**A092869 -- Richard T. Edwards v. Oakland Unified School District.**

The judgment is affirmed. Horner, J.\* We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A092467 -- Estate of Kelly Benjamin Niles, Deceased.**

Order Modifying Opinion and Denying Rehearing. By the Court: It is ordered that the opinion filed herein on May 23, 2001, be modified in the following particulars: (See order.) The petition for rehearing is denied. There is no change in the judgment. McGuiness, P.J. (Not for Publication.)

**A093565 -- In re the marriage of Brenda and Andre Rambo.**

The trial court's child support order is affirmed. Respondent shall recover his costs on appeal. Horner, J.\* We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.



Monday, June 18, 2001 (continued)

Division Four

**A087846 -- Darlene Bonanno, an Incompetent Person, etc. v. Central Contra Costa Transit Authority**

**A088589 -- Darlene Bonanno v. Central Contra Costa Transit Authority.**

We affirm the judgment and the postjudgment orders in their entirety. Reardon, Acting P.J. We Concur: Sepulveda, J., Chiantelli, J.\* (Certified for Partial Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A087670 -- The People v. Kumyet Cheung.**

The judgment is reversed. Reardon, Acting P.J. We Concur: Sepulveda, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090262 -- El Sobrante Valley Legal Defense Fund v. City of Richmond et al.; Dame Construction Company, Inc., R.P.I.**

The judgment is affirmed with costs to respondent. Reardon, Acting P.J. We Concur: Sepulveda, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091157 -- In re Robert G., a Person Coming Under the Juvenile Court Law.**

The order is affirmed. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Monday, June 18, 2001 (continued)

Division Five

**A091587 -- The People v. Sandra M. Young.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J.  
(Not for Publication.)

Tuesday, June 19, 2001

Division One

**A094754 -- Jonathon C. v. The Superior Court of Lake County; Lake County Department of Social Services, et al.**

The challenged orders are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.) The section 366.26 hearing is set for July 9, 2001. Therefore, our decision is final in this court immediately. Stein, Acting P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

**A091492 -- The People V. George Emerson Guinn, Jr.**

The judgment is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

Division Two

**A095259 -- Rickey Louis Alford v. The Superior Court of Del Norte County; The People of the State of California, R.P.I.**

By the Court: The petition for writ of mandate/prohibition is denied. Haerle, Acting P.J.

**A095266 -- Norlissa Cooper v. The Superior Court of Alameda County; Scott Mitchell et al., R.P.I.**

By the Court: The petition for writ of mandate/prohibition/stay is denied. Haerle, Acting P.J.

**A087395 -- The People v. Joseph Perry Deshon, et al.**

The judgment is affirmed. Haerle, J. I Concur: Ruvolo, J. (Not for Publication.) (See concurring opinion by Kline, P.J.)

Tuesday, June 19, 2001 (continued)

**A095255 -- David Lockmiller v. The Superior Court of San Francisco County; DC Typography, R.P.I.**

By the Court: The petition for writ of certiorari/stay is denied. Haerle, Acting P.J.

**A091525 & A092357 -- David Replogle, et al. v. JAMS/Endispute, et al.**

The judgment is reversed insofar as it sustains the demurrer to appellants' third cause of action without leave to amend. In all other respects, the judgment is affirmed. The parties are to bear their own costs on appeal. Haerle, Acting P.J.  
We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A095240 -- In re Fernando Vargas, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Haerle, Acting P.J.

**A091161 -- In re Kenneth W., a Person Coming Under the Juvenile Court Law.**

The conviction for violation of section 496 is reversed. The section 10851 conviction is affirmed, as is the order committing appellant to CYA. Kline, P.J.  
We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A091090 -- The People v. Christopher Washington.**

The case is remanded to the trial court for resentencing consistent with the views expressed herein. In all other respects, the judgment is affirmed. Kline, P.J.  
We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Tuesday, June 19, 2001 (continued)

Division Four

**A085453 -- The People v. Peter A. Martinez.**

The additional five years imposed pursuant to section 667, subdivision (a) shall be stricken and defendant's total sentence reduced accordingly. The trial court is directed to prepare an amended abstract of judgment and to forward a certified copy to the Department of Corrections. In all other respects, the judgment is affirmed. Sepulveda, J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090166 -- The People v. Joe Quintana.**

The judgment is affirmed. Kay, J. We Concur: Sepulveda, Acting P.J., Chiantelli, J.\* (Certified for Partial Publication.)

Wednesday, June 20, 2001

Division One

**A089743 -- The People v. Rahsaan Coleman.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

Division Two

**A092427 -- The People v. Keith Romelle Fields.**

The judgment of conviction is affirmed. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A088808 -- Stephens A. Marsh v. Merrily J. Marsh.**

We affirm the orders entered August 12, 1999, denying the motion to set aside the 1987 judgment and the motions to compel responses to interrogatories and to establish admissions and for monetary sanctions. Ruvolo, J. We Concur: Kline, P.J., Lambden, J. (Not for Publication.)

**A095222 -- In re Leonard Ransom Jr., on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Haerle, Acting P.J.

Division Three

**A091222 -- World Marketing Alliance, Inc., et al. v. California Commissioner of Corporations.**

The judgment is reversed and the case remanded to the trial court with directions to issue a peremptory writ of mandate ordering the Commissioner to vacate its October 7, 1999 decision. The Commissioner may elect to refer the matter to the ALJ to make further findings of fact. Each party is to bear its own costs on appeal. Horner, J.\* We Concur: McGuinness, P.J., Corrigan, J., (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Wednesday, June 20, 2001 (continued)

Division Four

**A092039 -- In re Afrom H., a Person Coming Under the Juvenile Court Law.**

The order is affirmed. Reardon, Acting P.J. We Concur: Sepulveda, J., Kay, J. (Not for Publication.)

**A092069 -- In re the Marriage of Duane Zander and Virginia Zander Rice.**

The judgment is affirmed. Kay, J. We Concur: Reardon, Acting P.J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, June 21, 2001

Division One

**A091234 -- The People v. Michele Marsha Young.**

The judgment is affirmed. Stein, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

Division Two

**A092813 -- America Online, Inc. v. The Superior Court of Alameda County; Al Mendoza, Jr. et al., R.P.I.**

The order to show cause is discharged and the petition for writ of mandate is denied. Costs are awarded to Mendoza. Ruvolo, J. We Concur: Haerle, Acting P.J., Lambden, J. (Certified for Publication.)

**A088888 -- Lenora Amunrud v. Tom Lang Corporation et al.**

The judgment is affirmed. Costs on appeal are awarded to respondents. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A091832 -- The People v. Brad G. Baechtel.**

The judgment, as amended, is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A090470 -- Lawrence and Elizabeth Kiepert v. Contra Costa Fire Protection District.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.) ‘



Thursday, June 21, 2001 (continued)

Division Three

**A091249 -- In re Evan N., a Person Coming Under the Juvenile Court Law.**

The order terminating parental rights is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A088611 -- Guardians of Elk Creek Old Growth v. California Department of Forestry and Fire Protection; Pacific States Industries, Inc., et al.; R.P.I.**

The dismissal is affirmed. The parties shall bear their own costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication.)

Division Four

**A094752 -- In re Daniela H., a Person Coming Under the Juvenile Court Law.**

The petition is denied on the merits (Cal. Rules of Court, rule 39,1B(o)), and this decision is final immediately. Kay, J. We Concur: Reardon, Acting P.J., Sepulveda, J. (Not for Publication.)

**A091689 -- The People v. Nicholas Robert Zangari.**

The judgment is affirmed. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Kay, J. (Certified for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Friday, June 22, 2001

Division One

**A090655 -- The People v. John Patrick Alander.**

The judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A088557 -- The People v. Michael John Mendez.**

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A093426 -- Elizabeth Michael, a Minor, etc., et al. v. Borg-Warner Automotive, Inc.**

By the Court: Counsel having so stipulated the appeal is dismissed, with each party to bear its own costs on appeal. The remittitur is to issue forthwith. Strankman, P.J.

**A092523 -- In re Bessie S., a Person Coming Under the Juvenile Court Law.**

The order is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

**A091108 -- In re Lananaushika M., a Person Coming Under the Juvenile Court Law.**

The order terminating dependency jurisdiction is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

**A091486 -- The People v. Michael Jaro.**

The judgment is modified to reduce appellant's consecutive sentence for violation of Health and Safety Code section 11351 from four years to one year. Upon issuance of the remittitur, the superior court shall prepare its abstract of judgment accordingly and forward it to the appropriate authorities. (*People v. Jackson* (1981) 117 Cal.App.3d 654, 659-660.) As modified, the judgment is affirmed. Marchiano, J. We Concur: Stein, Acting P.J., Swager, J. (Not for Publication.)

Friday, June 22, 2001 (continued)

**A092097 -- Fannie Williams v. Les Adams et al.**

We reverse the judgment as to the first cause of action, but affirm in all other respects. Each party to bear its own costs. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Not for Publication.)

**A095246 -- The People v. Donald Allen Young.**

By the Court: On May 29, 2001, Jill Suzette Harper filed a notice of appeal on behalf of her husband, Donald Allen Young. If the appeal is by the defendant, the notice shall be signed by him or by his attorney. Therefore, the appeal is inoperative. (Cal Rules of Court, rule 31(b)). The appeal is dismissed. Strankman, P.J.

Division Two

**A090403 -- In re Sheneeka J., a Person Coming Under the Juvenile Court Law.**

We affirm. Haerle, Acting P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

**A095072 -- In re Johnny C. Jackson, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Petitioner indicates that he has not first sought relief from the Solano County Superior Court. In addition, petitioner complains only about a 1990 decision by the Board of Prison Terms (BPT). If the BPT has made more recent decisions, the most recent controls his current status and his challenge to the 1990 ruling is now moot. Haerle, Acting P.J.

Division Three

**A090326 -- International Federation of Professional and Technical Engineers, Local 21, AFL-CIO v. City and County of San Francisco et al.**

By the Court: Appellant's petition for rehearing is denied. McGuiness, P.J.

Friday, June 22, 2001 (continued)

**A087404 -- In re the Marriage of Carol and Richard Bradley.  
Richard Bradley v. Carol Bradley.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

**A088990 -- Philip Livingston v. Ingalls Shipbuilding, Inc.**

The judgment is affirmed. Livingston shall recover his costs. Parrilli, J.  
We Concur: Corrigan, Acting P.J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief  
Justice pursuant to article VI, section 6 of the California Constitution.

**A091924 -- In re Ryan M., a Person Coming Under the Juvenile Court  
Law.**

The child molestation finding is reversed. Parrilli, J. We Concur:  
McGuiness, P.J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief  
Justice pursuant to article VI, section 6 of the California Constitution.

**A090452 -- G.A. "Skip" Moore v. James Griffin et al.**

The judgment is affirmed. Corrigan, Acting P.J. We Concur: Parrilli, J.,  
Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief  
Justice pursuant to article VI, section 6 of the California Constitution.

**A088848 -- The People v. Michael Patrick.**

The judgment is affirmed. McGuiness, P.J. We Concur: Parrilli, J.,  
Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief  
Justice pursuant to article VI, section 6 of the California Constitution.

**A094666 -- The People v. The Superior Court of San Francisco  
County; Delma V., (A Minor), R.P.I.**

By the Court: The petition for rehearing is denied. McGuiness, P.J.

Friday, June 22, 2001 (continued)

**A090156 -- Donald R. Yurick, Jr., et al. v. Mark Pulido, et al.**

By the Court: The request for publication of the opinion filed May 23, 2001, is denied. McGuiness, P.J.

**A092032 -- The People v. Victor Woodard.**

The order is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J.  
(Not for Publication.)

Monday, June 25, 2001

Division One

**A090099 -- Golden Eagle Insurance Corp. v. Albera Brothers, Inc. et al.**

The judgment is affirmed. Strankman, P.J. We Concur: Stein, J., Swager, J. (Not for Publication.)

**A094985 -- Samantha H. v. The Superior Court of Solano County; Solano County Health and Social Services Department, R.P.I.**

The challenged orders are supported by substantial evidence. (*James B. v. Superior Court* (1995) 35 Cal.App.4th 1014, 1021.) The petition for extraordinary writ is denied on the merits. (See Cal. Const., art. VI, § 14; *Kowis v. Howard* (1992) 3 Cal.4th 888, 894; *Bay Development, Ltd. v. Superior Court* (1990) 50 Cal.3d 1012, 1024.)

The section 366.26 hearing is set for August 15, 2001. Therefore, our decision is final in this court immediately. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)

**A095105 -- Jessie A. Lewis v. The Superior Court of Solano County; C.A. Terhune, as Director, etc., R.P.I.**

By the Court:\* The Clerk of this court is therefore directed to attach a certified copy of all filings in this court to this opinion. Let a peremptory writ of mandate issue commanding the County of Solano Superior Court to immediately file the document entitled "Supplement to Petition for Writ of Habeas Corpus." in its file No. FCR188208. This opinion is final as to this court immediately. (Cal Rules of Court, rule 24(d).) (Not for Publication.)

\*Before Strankman, P.J., Swager, J., and Marchiano, J.

**A091978 -- In re the Marriage of Carol Marie Mateo-Newton and Earl Herman Newton.**

The judgment is affirmed. Wife's motion for sanctions is denied without prejudice to a request for attorney fees in the trial court. (Fam. Code, § 2030, subd. (c).) Wife is awarded costs on appeal. Strankman, P.J. We Concur: Stein, J., Marchiano, J. (Not for Publication.)

Monday, June 25, 2001 (continued)

**A095049 & A094183 -- In re Robert P., (minor) Social Services Agency v. Gwendolyn P.**

By the Court: Appellant's motion to consolidate the appeals in A094183 and A095049 is granted. Said appeals are hereby consolidated for purposes of briefing, oral argument and decision. Counsel is informed that all future filings shall bear both appellate case numbers. Appellant's opening brief shall be served and filed within 30 days after the record is filed in A095049. Strankman, P.J.

Division Two

**A095290 -- In re Jerry M. Wade, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Haerle, Acting P.J.

**A089868 -- Kenneth Russo v. Omar Shafi et al.**

Accordingly, the judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Five

**A093026 -- The People v. Kenneth Hershel Gibison.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A090562 -- The People v. James Lamont Smith III.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

**A088096 -- The People v. Darryl J. Francis.**

The judgment is affirmed. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)

Monday, June 25, 2001

**A090848 -- The People v. David Arthur Cox.**

The judgment is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J.  
(Not for Publication.)

**A092378 -- The People v. Richard William Krom.**

The order requiring the payment of \$250 under section 987.8 as a legal assistance fee is stricken. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)



Tuesday, June 26, 2001

Division Two

**A092791 -- The People v. Carlos Fabian Addison.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

**A093558 -- Liem Le v. County of Contra Costa.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Ruvolo, J. (Not for Publication.)

**A090290 -- Bennie R. Greenwood v. Vallejo City of Unified School District.**

The order denying the petition for writ of mandate is affirmed. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A094253 -- In re Angel O., a Person Coming Under the Juvenile Court Law.**

The appeal is dismissed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A095300 -- Marin Development et al. v. The Superior Court of Marin County; Michael Masterson et al., R.P.I.**

By the Court: The petition for writ of mandate/prohibition is denied. Haerle, Acting P.J.

**A090536 -- Terry Reese v. Oakland Football Marketing Association.**

As a matter of law, appellant cannot obtain specific performance of an uncertain agreement requiring serial adjudication of subjective choices. Appellant could have purchased the seats he claims under the agreement and then sued for their price, thereby saving the time and effort of everyone involved, including this court. We express no opinion regarding how an action at law for the breach of such a contract might have concluded, but merely affirm that the trial court correctly concluded that specific performance was unavailable as a remedy. Respondents shall recover costs on appeal. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

Tuesday, June 26, 2001 (continued)

Division Three

**A092221 -- American Equity Insurance Company v. Daniel Beck**

**A092636 -- Daniel Beck v. Ronald H. Wecht et al.**

In Beck's appeal (A092636) we affirm the trial court's entry of summary judgment in favor of Wecht. As a matter of law, as cocounsel representing the Stephenses in their action against General Motors, Wecht and Beck were not in a fiduciary relationship and owed each other no fiduciary duties. Wecht shall recover his cost on appeal. In American Equity's appeal

In American Equity's appeal (A092221) we affirm the trial court's entry of summary judgment in favor of Beck. The attorneys involved in the prosecution of the Stephenses' actions were not parties to a joint venture agreement. Accordingly, American Equity's claim for statutory contribution under partnership principles failed. Beck shall recover his costs on appeal. Horner, J.\* We Concur: McGuiness, P.J., Corrigan, J. (Certified for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091236 -- The People v. Johnny Lawrence Brinson.**

The judgment and sentence are -affirmed. Horner, J.\* We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090395 -- Clifford Sloan et al. v. Carlino Bettega.**

The order is affirmed. Respondents shall recover their costs on appeal. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

Tuesday, June 26, 2001 (continued)

**A087774 -- Estate of Myrtle L. Towle, Deceased,  
Patricia Olcomendy et al. v. Gerald F. Kellher.**

**A088053 -- Estate of Myrtle L. Towle, Deceased,  
Jeanne Schwarz et al. v. Gerald F. Kelleher.**

The order on the petitions is reversed and remanded to the trial court. The order striking the cost bill is vacated. Jeanne's motion to strike portions of Gerald's opening brief on appeal is denied, as is Gerald's request for costs and attorney's fees. Each party is to bear its own costs on appeal.

Corrigan, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Four

**A091534 -- Steven L. Chandler v. City of Richmond et al.**

The judgment is affirmed. The parties shall bear their own costs. Chiantelli, J.\* (Not for Publication.) Reardon, Acting P.J., Kay, J. (Not for Publication.)

Division Five

**A091884 -- Raul L. Aguilar v. Esther R. Lerner, etc.**

The judgment confirming the arbitration award is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Certified for Partial Publication.)

**A091750 -- The People v. Richard Darrell Moon.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A090461 -- Wine World Estates Company v. Heublein, Inc.**

The judgment for damages based on the jury verdict is affirmed. The trial court's order allowing potential recovery of attorney fees under the "tort of another" doctrine is vacated. Each party shall bear its own costs on appeal. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, June 26, 2001

The Court convened at 9:30 a.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J., and Chiantelli, Assigned Judge from San Francisco County Superior Court; Channing Hoo, Deputy Clerk; Guardsmark Officer Michelle Gilmore, Bailiff.

- A091258      People  
                  v.  
                  David Eugene Albillar  
Cause called. Nella Bertin teleargued for appellant Albillar. Lisa Ashley Ott argued for respondent. Cause submitted.
- A090951      American Overseas Air Freight, Inc.  
                  v.  
                  330 Beach Street Investors, LLC et al.  
Cause called. George Wailes argued for appellants 330 Beach et al. Thomas Fitzgibbon argued for respondent. Cause submitted.
- A087775      Wayne A. McFadden  
                  v.  
                  Robert Marsili et al.  
Cause called. Shelley Buchanan argued for appellants Marsili et al. Richard Owen and John M. Walker argued for respondents. Cause submitted.

At this point, the Court reconstituted itself to include Reardon, Acting P.J., Kay, J., and Chiantelli, Assigned Judge.

A090121

Gordon Gee et al.

v.

American Realty & Construction, Inc. et al.

Cause called. Bradley Kass argued for appellants Gee et al. Mattaniah Eytan argued for respondents. Cause submitted.

The Court recessed at 11:11 a.m.

MINUTES  
CALIFORNIA COURT OF APPEAL  
FIRST APPELLATE DISTRICT  
DIVISION FOUR  
Tuesday, June 26, 2001

The Court reconvened at 1:30 p.m. in its courtroom at 350 McAllister Street, 4th Floor, San Francisco. Present: Reardon, Acting P.J., Sepulveda, J., and Kay, J.; Channing Hoo, Deputy Clerk; Guardsmark Officer Michelle Gilmore, Bailiff.

A089297

People

v.

Joseph Dennis Snow

Cause called. James Johnson argued for appellant Snow. Certified law student Jimmie Johnson argued for respondent. Cause submitted.

The Court adjourned at 1:48 p.m.

Wednesday, June 27, 2001

Division One

**A095141 -- Hugo Palacios, et al. v. Medtronic Ave., Inc.**

By the Court: Appellant having failed to procure the record on appeal within the time allowed or within any valid extensions of time, having failed to show good cause for relief from default, the appeal filed May 23, 2001, is dismissed. (See Cal. Rules of Court, rule 10(c).) Strankman, P.J.

Division Two

**A089200 -- The People v. Bruce Wai Yeung.**

The judgment is affirmed. Strankman, P.J. We Concur: Swager, J., Marchiano, J. (Not for Publication.)

**A093808 -- In re Mary A. et al., a Person Coming Under the Juvenile Court Law.**

The judgment is affirmed. Lambden, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A087678 -- The People v. John A. Carey.**

The judgment is affirmed. Haerle, J. I concur: Haerle, J., Ruvolo, J., Kline, P.J. I concur in the judgment only. (Not for Publication.)

**A095319 -- In re Terry D. Cranford, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus is denied. Petitioner must first exhaust administrative remedies and then seek review in the trial court, and thereafter, in the Sixth District Court of Appeal. Haerle, Acting P.J.

**A095315 -- In re Gregory Goss, on Habeas Corpus.**

By the Court: The petition for writ of habeas corpus. Haerle, Acting P.J.

June 27, 2001 (continued)

**A092218 -- Maurice Dosso v. Corsair International S.A. et al.**

The judgment is affirmed. Appellant is sanctioned in the sum of \$7260 for pursuing a frivolous appeal. Respondents are awarded their costs on this appeal. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

**A091773 -- The People v. Jamai Johnson.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Ruvolo, J. (Not for Publication.)

**A091666 -- The People v. Ricardo Landavazo.**

The judgment is affirmed. Lambden, J. We Concur: Haerle, Acting P.J., Ruvolo, J. (Not for Publication.)

Division Three

**A089452 -- The People v. Kevin Jones.**

The judgment is affirmed. McGuinness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

**A088415 -- -The People v. Jeanyne Lynn Lotti.**

The judgment is affirmed. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)

**A092792 -- The People v. Jacob Paul Mason.**

The trial court's August 14, 2000 order is stricken to the extent that it assesses public defender fees against appellant, but is affirmed in all other respects. Horner, J.\* We Concur: McGuinness, P.J., Parrilli, J. (Not for Publication.)

**A091452 - Round Valley Indian Tribes v. Carlino Bettega.**

The order is affirmed. The Tribe shall recover its costs on appeal. Parrilli, J. We Concur: McGuinness, P.J., Corrigan, J. (Not for Publication.)





Wednesday, June 27, 2001 (continued)

**A089903 -- Vanir Construction Management, Inc. v. City and County of San Francisco.**

The judgment is affirmed. Vanier shall pay the City's costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A086414 --The People v. Stephen Donald Warga.**

The judgment is reversed. Horner, J.\* We Concur: Corrigan, Acting P.J., Parrilli, J. (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A091775 -- The People v. Robert A. Pizzagrani.**

**A092257 -- The People v. Robert A. Pizzagrani**

The trial court is ordered to prepare and to forward to the Department of Corrections an amended abstract of judgment showing appellant shall be incarcerated for a term of 45 years to life for his second degree murder conviction. In all other respects the judgment is affirmed. In particular, there is no change to the terms imposed for the enhancements that were found to be true. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A091226 -- Janardhan Redy v. Board of Dental Examiners.**

The order denying the petition for writ of mandate is affirmed. Stevens, J. We Concur: Jones, P.J., Simons, J. (Not for Publication.)

Thursday, June 28, 2001

Division One

**A090760 -- Laurel Glen Convalescent Hospital, Inc. v. Diane M. Bonta, as Director, etc. et al.**

Accordingly, we consent to the entry of the parties' stipulation that entry of judgment in the trial court renders the instant appeal moot and dismiss the instant appeal. McGuiness, P.J. We Concur: Parrilli, J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A092304 -- In re Mohammad Ali., on Habeas Corpus**

The order granting the petition for writ of habeas corpus is reversed insofar as it finds a liberty interest in a prison custody classification and directs that Ali's status be reduced to Medium A. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

**A092882 -- In re Corey L., a Person Coming Under the Juvenile Court Law.**

Accordingly, the judgment is affirmed. Swager, J. Stein, Acting P.J., Marchiano, J. (Not for Publication.)

**A091074 -- The People v. Larry Lavonta Tait.**

We therefore modify the judgment to stay execution of the sentence imposed in count 1 for violation of Penal Code section 422 (terrorist threats) pending the service of the sentence in count 2 for violation of Penal Code section 245, subdivision (b), (assault with a semi-automatic firearm); the stay is to become permanent upon completion of the term imposed in count 2. The prison term of six years remains the same. The trial court is directed to correct the abstract of judgment as indicated above and to forward a corrected certified copy to the Department of Corrections; the department will modify its records accordingly. As modified, the judgment is affirmed. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

Thursday, June 28, 2001 (continued)

Division Two

**A091540 -- Estate of Richard B. Bellinger, Deceased.**

The order is affirmed. Ruvolo, J. We Concur: Kline, P.J, Lambden, J.  
(Not for Publication.)

**A092605 -- The People v. Duke Kimberly Bolter.**

The order dismissing the special circumstance allegation under section 190.2, subdivision (a)(10) is reversed. The stay of trial previously ordered in this case is hereby dissolved. Lambden, J. We Concur: Kline, P.J., Ruvolo, J.  
(Certified for Publication.)

**A090877 -- The People v. Dalano Charles Gonzalez.**

The judgment is affirmed. Haerle, J. We Concur: Kline, P.J., Lambden, J.  
(Not for Publication.)

**A095115 -- The Hearst Corporation et al. v. The Superior Court of San Francisco County; The People of the State of California et al., R.P.I.**

By the Court: The petition for writ of mandate/prohibition/certiorari is denied. Haerle, Acting P.J.

**A091875 -- Insurance Commissioner of the State of California v. Golden Eagle Insurance Company, David Saad et al.**

The judgment is affirmed. Kline, P.J. We Concur: Lambden, J., Ruvolo, J. (Not for Publication.)

Thursday, June 28, 2001 (continued)

Division Three

**A090715 -- Albion River Watershed Protection Association et al. v. California Department of Forestry & Fire Protection et al.; Mendocino Redwood Company, LLC, et al.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A087022 -- The People v. Douglas Ray Anderson.**

The judgment is affirmed. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A094749 -- Clifford B. v. The Superior Court of Alameda County; Alameda County Social Services Agency et al., R.P.I.**

The petition is denied. Parrilli, J. We Concur: McGuiness, P.J., Corrigan, J. (Not for Publication.)

**A089943, A089964, A090441 -- In re the Marriage of Denise Della-Dora and Dennis M. Hancock. Denise Della-Dora v. Dennis M. Hancock..**

The judgment of dissolution of marriage (Case No. A089964) is affirmed. The appeals from the orders listing the parties' residence for sale (Case No. A089943) and setting the amount of the appeal bond (Case No. A090441) are dismissed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

Thursday, June 28, 2001 (continued)

**A092689 -- The People v. Miguel Angel Hernandez.**

We observe that the record discloses several potential violations of probation that were not charged by the prosecution. For example, appellant could potentially be found to have violated probation by not paying the fines imposed in 1999—if it can be demonstrated that he had the means to pay those fines. (See *Self, supra*, 233 Cal.App.3d at pp. 418-419.) Or the prosecution may be able to demonstrate that appellant failed to obey all laws by returning illegally to the United States after having been deported. (See *People v. Campos* (1988) 198 Cal.App.3d 917, 921-923.) We offer no opinion on whether or not a revocation petition could or should be sustained on either ground. However, given the state of the record before us, which reflects colorable violations of the terms of appellant's probation, the proper choice is to reverse and remand for further proceedings that comport with procedural and substantive due process. (See *Mosley, supra*, 198 Cal.App.3d at pp. 1174-1175.) McGuiness, P.J. We Concur: Corrigan, J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A090384 -- The People v. George Edward McCrae.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A091748 -- The People v. Charles Eldon Wilder.**

The judgment is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Not for Publication.)

Division Four

**A092870 -- Sung Suk Kim v. YMCA of the East Bay.**

The judgment is affirmed. Sepulveda, Acting P.J. We Concur: Kay, J., Chiantelli, J.\* (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Thursday, June 28, 2001 (continued)

**A088968 -- The People v. Robert Neal Sanger.**

The judgment is affirmed. Chiantelli, J.\* We Concur: Reardon, Acting P.J., Kay, J. (Not for Publication.)

\*Judge of the San Francisco Superior Court assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

Division Five

**A091238 -- The People v. Lorenzo Haley, Jr.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

Friday, June 29, 2001

Division One

**A091767 -- BVY Group v. Estero Municipal Improvement District et al.**

The judgment is affirmed. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

**A091315 -- Information Systems and Network Corporation v. Securacom, Inc.**

Accordingly, the judgment is modified to award interest to Securacom from the date of entry of the order awarding attorney fees, April 3, 2000. In all other respects, the judgment is affirmed. The request of Securacom for an award of attorney fees in the trial court following the Special Master's recommendation and on appeal is denied. The parties are to bear their own costs on appeal. Swager, J. We Concur: Strankman, P.J., Stein, J. (Not for Publication.)

**A088078 -- Kearney & O'Banion, Inc., et al. v. State of Compensation Insurance Fund.**

The judgment is reversed. Costs on appeal are awarded to the appellants. Swager, J. We Concur: Strankman, P.J., Marchiano, J. (Not for Publication.)

**A091839 - Thomas E. Krouse v. Bancamerica Securities, inc. et al.**

The judgment is affirmed. Marchiano, J. We Concur: Strankman, P.J., Swager, J. (Not for Publication.)

**A091865 -- Richard A. Raimondi, et al. v. Ford Motor Company.**

By the Court: The petition for rehearing is denied. Strankman, P.J.

**A093466 -- The People v. Clinton W. Velasco.**

Accordingly, the judgment is affirmed. Swager, J. We Concur: Stein, Acting P.J., Marchiano, J. (Not for Publication.)



Friday, June 29, 2001 (continued)

Division Two

**A090337 -- Guardianship of Austin F-H. et al., Minors.**

After reviewing the entire record, we find substantial evidence supporting the trial court's order terminating guardianship of Josie. Having found no other reversible error, we affirm the judgment. Ruvolo, J. We Concur: Kline, P.J., Haerle, J. (Not for Publication.)

**A090616 -- The People v. KYB Fugfugosh.**

The judgment is affirmed. Kline, P.J. We Concur: Haerle, J., Lambden, J. (Not for Publication.)

Division Three

**A091020 -- In re the Marriage of Lesley Ann and Harold James Copeman.**

The order expunging child support arrears is affirmed. Respondent to recover his costs on appeal. Parrilli, J. We Concur: Corrigan, Acting P.J., Horner, J.\* (Certified for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A083451 -- First Lieutenant Andrew Holmes et al. v. California National Guard et al.**

**A085180 -- First Lieutenant Andrew Holmes et al. v. California National Guard et al.**

The cause is remanded to the trial court for modification of the judgment, including the injunctions contained therein, so as clearly and expressly to limit their scope to protecting the rights of homosexuals to state active duty employment in the California National Guard not requiring federal recognition.

In all other respects, both the judgment and the order denying an award of attorney fees to plaintiff under section 1021.5 are affirmed. Each side shall bear its own costs on appeal. McGuiness, P.J. We Concur: Corrigan, J., Parrilli, J. (Certified for Partial Publication.)

Friday, June 29, 2001 (continued)

**A087396 -- The People v. Phillip Paul Jackson.**

Affirmed. Horner, J.\* I concur: Corrigan, Acting P.J. (See concurring opinion by Parrilli, J.) (Not for Publication.)

**A092736 -- In re Ariyanna M-T., a Person Coming Under the Juvenile Court Law.**

The order terminating Bryant's parental rights is affirmed. McGuiness, P.J. We Concur: Corrigan, J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A091028 -- The People v. Anthony T. Pratt.**

The judgment is affirmed. Corrigan, J. We Concur: McGuiness, P.J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

**A093765 -- Preserve Country Neighborhoods, et al. v. Cold Creek Compost, Inc., et al.**

The appeal is dismissed. The parties are to bear their own costs on appeal. The defendants' request for sanctions is denied. Corrigan, J. We Concur: McGuiness, P.J., Parrilli, J. (Not for Publication.)

**A090547 -- Rancho Solano Master Association v. Kiewit Pacific Company.**

The attorney's fees award is reversed and remanded for further proceedings. In all other respects the judgement is affirmed. Kiewit is awarded its costs on appeal. Corrigan, Acting P.J. We Concur: Parrilli, J., Horner, J.\* (Not for Publication.)

\*Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

June 29, 2001 (continued)

Division Five

**A093478 -- In re Keith C., a Person Coming Under the Juvenile Court Law.**

The order continuing defendant as a ward of the court is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A092091 -- Mort Garson et al. v. Lawrence William Fasano, Jr.**

The judgment is affirmed. Costs on appeal shall be awarded to respondent. Simons, J. We Concur: Jones, P.J. Stevens, J. (Not for Publication.)

**A087671 -- The People v. Keith Hopkins.**

The judgment is reversed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A090571 -- The People v. Rigoberto Fajaardo Morataya.**

The judgment is affirmed. Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A094982 -- In re Jimmy R., a Person Coming Under the Juvenile Court Law. Jimmy R., Petitioner; The Superior Court of Contra Costa County; Contra Costa County Department of Social Services, R.P.I.**

The order to show cause is discharged, and the petition for extraordinary relief and request for a stay are denied on their merits. (Cal. Const., art. VI, § 14; Rule 391B(o); *Kowis v. Howard* (1992) 3 Cal.45Haerle, J. 888, 894.) Petitioner is barred in any subsequent appeal from making further challenges to the orders terminating reunification services and setting a hearing under section 366.26. § 366.26, subd. (1).) Because the section 366.26 hearing is set for August 14, 2001, our decision is final as to this court immediately. (Cal Rules of Court, rule 24(a).) Jones, P.J. We Concur: Stevens, J., Simons, J. (Not for Publication.)

**A091447 -- Estate of Naomi Scott, Deceased.**

The judgment is affirmed. Respondent shall recover costs on appeal. Simons, J. We Concur: Jones, P.J., Stevens, J. (Not for Publication.)